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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 746

RUDOLPH SPITZER, *et al.*,

Petitioners,

IN THE MATTER

of

STANDARD GAS & ELECTRIC COMPANY,

Debtor.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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INDEX.

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statement	2
Argument	3
I	3
II	4
III	5
Conclusion	6

CASES CITED.

Ex parte Baldwin, 291 U. S. 610	4
Bovay v. *H. M. Byllesby and Company*, 88 Fed. (2d) 990 [C. C. A., 5th]	3
In re Bush Terminal Co., 105 Fed. (2d) 156 [C. C. A., 2nd]	3
Continental Illinois National Bank and Trust Company v. *Chicago, Rock Island and Pacific Railroad Co.*, 294 U. S. 648	3, 4, 5
Gochenour v. *Cleveland Terminals Building Co.*, 118 Fed. (2d) 89 [C. C. A., 6th]	3, 4
In re Greyling Realty Corp., 74 Fed. (2d) 734 [C. C. A., 2nd]	5
In re Standard Gas & Electric Co., 119 Fed. (2d) 658 [C. C. A., 3rd]	3
Stephan v. *Merchants Collateral Corp.*, 256 N. Y. 418	5
Toucey v. *New York Life Insurance Company*, 314 U. S. 118	4
Zeleznik v. *Grand Riviera Theatre Co.*, 128 Fed. (2d) 533 [C. C. A., 6th]	4, 5

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Opinions Below.

No opinion was rendered by the District Court, which was sitting as a court of bankruptcy. The opinion of the Circuit Court of Appeals (R. 19-24) is reported in 139 Fed. (2d) 149.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered December 1, 1943 (R. 25). Petition for certiorari was filed March 1, 1944. Jurisdiction of this Court is invoked under Section 347 of the Judicial Code and Rule 38 of the Rules of this Court.

Questions Presented.

The order of the District Court in bankruptcy having supervision over the Debtor (which Court is hereinafter referred to as the "Bankruptcy Court") enjoined petitioners and all other stockholders of the Debtor from intervening in, or interfering in any way with, any lawsuits now pending or which may be brought by the Special Trustee of the Debtor, and directed that the order be served by registered mail addressed to the petitioners at an address outside the state in which the Bankruptcy Court was sitting (R. 1). The Circuit Court of Appeals unanimously affirmed. The questions presented are:

1. Whether the Bankruptcy Court had power to issue the injunction.

2. Whether such issuance was an abuse of discretion.

3. Whether the orders of the Bankruptcy Court on such injunction were properly served.

Statement.

In the reorganization under Section 77B of the Bankruptcy Act in the District Court for Delaware, the Debtor was continued in possession. Subsequently, respondent, Daniel O. Hastings, was appointed Special Trustee of the Debtor with title to certain causes of action, and the Debtor was divested of title (R. 10-11). Jurisdiction over the Special Trustee and the property vested in him was expressly reserved in that order, as well as in the orders of the Bankruptcy Court approving a plan of reorganization (R. 12) and closing the case subject to reservations (R. 13-14).

Respondent brought suit in the Supreme Court of the State of New York on the causes of action vested in him. Petitioners, as stockholders of the Debtor, moved in that Court for leave to intervene as parties plaintiff. On the application of respondent, the Bankruptcy Court enjoined the petitioners and all other stockholders of the Debtor.

ARGUMENT.

I.

The causes of action were property of the Debtor within the jurisdiction of the Bankruptcy Court (*In re Bush Terminal Co.*, 105 Fed. (2d) 156 [C. C. A., 2nd]; *Gochenour* v. *Cleveland Terminals Building Co.*, 118 Fed. (2d) 89 [C. C. A., 6th]; *Bovay* v. *H. M. Byllesby and Company*, 88 Fed. (2d) 990 [C. C. A., 5th]; *In re Standard Gas & Electric Co.*, 119 Fed. (2d) 658 [C. C. A., 3rd]).

The continuing reserved jurisdiction of the Bankruptcy Court over the Special Trustee and the property vested in him was proper (*In re Bush Terminal Co., supra*).

The power of the Bankruptcy Court to protect by injunction the subject matter of its jurisdiction has several statutory bases (Section 2 [15] Bankruptcy Act, 11 U. S. C. 11 [15]; Sections 262 and 265 Judicial Code, 28 U. S. C. 375, 379), and is also inherent in the Court as a court of equity (*Continental Illinois National Bank and Trust Company* v. *Chicago, Rock Island and Pacific Railroad Co.*, 294 U. S. 648).

Section 265 of the Judicial Code, stressed by petitioners, does not support their argument, because that section expressly excepts bankruptcy proceedings.

Petitioners assert a conflict between the decision below and *Toucey* v. *New York Life Insurance Company*, 314 U. S. 118. However, even the *Toucey* case recognized that the prohibition contained in Section 265 of the Judicial Code is subject to two exceptions: first, cases involving injunctions authorized by the Bankruptcy Law, and, second, cases involving prior jurisdiction over a *res*.

This Court has repeatedly upheld the jurisdiction of a bankruptcy court to enjoin interference with any of the assets in its possession (*Ex parte Baldwin*, 291 U. S. 610; *Continental Illinois National Bank and Trust Company* v. *Chicago, Rock Island and Pacific Railroad Co., supra*).

Similarly, this Court has also held that a District Court having jurisdiction over an equity receivership could enjoin the prosecution by a creditor in a state court of a cause of action possessed by the debtor (*Munroe* v. *Raphael*, 288 U. S. 485).

There is no conflict in any of the cases on these points. In the only other Circuit in which the instant question has been raised, the Court has sustained injunctions staying stockholders and creditors from proceeding with derivative suits in state courts (*Zeleznik* v. *Grand Riviera Theatre Co.*, 128 Fed. (2d) 533 [C. C. A., 6th]; *Gochenour* v. *Cleveland Terminals Building Co., supra*).

II.

The Bankruptcy Court did not abuse its discretion in issuing the injunction. The intervention of petitioners in the State Court suit would constitute a prejudicial interference therewith (R. 3, 24). Moreover, since the Debtor has been divested of title to the causes of action (R. 11), peti-

tioners, who as stockholders can only act derivatively, have no remaining enforcible right (*Stephan* v. *Merchants Collateral Corp.*, 256 N. Y. 418).

III.

The injunction was properly served outside the state in which the Bankruptcy Court sat because the Court having jurisdiction to protect a *res*, the process necessary to make its jurisdiction effective could run outside the state (*Continental Illinois National Bank and Trust Company* v. *Chicago, Rock Island and Pacific Railroad Co., supra; In re Greyling Realty Corp.*, 74 Fed. (2d) 734 [C. C. A., 2nd]). It has been held, although reliance need not be placed on the doctrine here, that service of a bankruptcy court's injunction is not required to render the injunction effective (*Zeleznik* v. *Grand Riviera Theatre Co., supra*).

Petitioners' argument, carried to a logical end, would permit any stockholder of a bankrupt corporation to commence a derivative suit safe from the injunction of the bankruptcy court which had been vested with the sole right to administer and collect the assets of the bankrupt. It is difficult to believe that such a result would be consistent with the purposes of the Bankruptcy Act.

Conclusion.

The case was correctly decided below. It involves no question of sufficient general importance for the allowance of a writ of certiorari. Petitioners have not shown any conflict among the decisions. The petition should, therefore, be denied.

Respectfully submitted,

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